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Why Animal Law Matters: Establishing Animal Law Section in Era of Emerging Issues

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Why animal law matters: establishing animal law section in era of emerging issues

I. Introduction

The Indiana State Bar Association is considering the formation of an animal law section in order to provide a forum for attorneys interested in legal issues relating to animals. This article defines animal law and discusses some of the areas of practice that deal with animal law issues.

II. What is animal law?

Animal law can simply be defined as any area of the law that relates to or impacts animals. Since animal law consists of many different areas of the law, it is likely the proposed animal law section could cosponsor activities with many existing sections of the ISBA.

It is important to contrast "animal law" with "animal rights" and "animal welfare." Animal rights theory is based on the philosophical belief that animals should not be used in any way by humans. Animal rights activists would oppose the use of animals for food, experimentation and entertainment. Animal welfare focuses on humane treatment, including the prevention of cruelty of animals. Many of the large animal advocacy groups in the United States would properly be defined as animal welfare organizations, and polls have shown widespread support of animal welfare initiatives.

Although attorneys that have an interest in animal law may define themselves as supporting either animal rights or animal welfare, animal law is much broader than these two issues. In many legal issues involving animals, frequently it is the law's impact on humans that is at the core of the representation.

III. The development of animal law as a practice area

Attorneys have been practicing in the area of animal law for many years. Although an increasing number of lawyers focus or limit their practice to animal law issues, many attorneys may deal with these cases on an occasional basis.

Due to the interest in animal law, it is being offered as a separate course in almost half of the ABA-accredited law schools in the United States. The law schools at Indiana University-Indianapolis and Valparaiso University offer animal law courses on a regular basis. Even a greater number of law schools have student organizations that focus on animal law issues.

There has also been a significant increase in the number of state bar association animal law sections and committees in recent years. Sixteen state bars have an animal law committee or section. There are several regional bar association animal law sections and committees, and the ABA's Tort, Trial & Insurance Practice Section has an animal law committee.

IV. Animal law issues that you may deal with in your current practice or you never knew that you practiced animal law

Criminal law

Issues relating to animals may already be part of your practice. An obvious example is the prosecution of animal cruelty or neglect cases. There have been several studies that link violence toward animals with violence toward humans. Studies have not just shown that violence toward animals can be a precursor to violence to humans, but also that if there is abuse of animals in the

home there is frequently abuse of other family members. Legislation has been passed in several states to ensure that protective orders can include companion animals. Dog fighting is frequently connected to other crimes, including those related to drug and gang activity. Separate from the concern over the welfare of animals, these factors serve to raise the profile of animal abuse cases when resources are limited.

Trust and estate law

It is estimated that 63 percent of U.S. households include at least one companion animal. It is also estimated that by the end of this decade approximately \$50 billion will be spent each year on the items for these companion animals. Surveys have shown that 93 percent of people with dogs and cats find that among the benefits of having a pet are companionship, love and affection. It is no surprise that for many people it is important to ensure that these animals are protected if the owners can no longer take care of their animals. Indiana and 39 other states as well as the District of Columbia have statutes that allow for the formation of an enforceable trust established for the purpose of caring for an animal or animals. Ind. Code §30-4-2-18 *et seq.*

Family law

A recent poll of the American Academy of Matrimonial Lawyers found that 23 percent of attorneys surveyed have found a growing occurrence of pet custody cases in the last five years. Legislation has been introduced in a few states to clarify how

(continued on page 38)

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companion animals can be treated in dissolution cases.

Civil litigation

Injuries to humans

Dog bite cases are obviously a source of litigation. If, as a result of the case, a dog is deemed to be dangerous or vicious, more people appear to be willing to actively defend the alleged actions of their dog or dogs, including but not limited to using DNA evidence to prove that their animal was not at fault.

It is also not uncommon to see cases relating to injuries due to activities involving equines (despite the defense of statutory immunity under the Equine Activity Statute). See, e.g., *Anderson v. Four Seasons Equestrian Center, Inc.*, 852 N.E.2d 576 (Ind. Ct. App. 2006) (discussing Ind. Code §34-31-5-1).

Injuries to animals

There are conflicting opinions over whether the number of lawsuits based on the injury or death of a companion animal due to veterinary malpractice is increasing. Indiana has case law on veterinary malpractice dating back to 1856. *Connor v. Winton*, 8 Ind. 315 (Ind. 1856). Lawsuits based on negligence in other circumstances such as grooming or boarding also occur. The recent settlement of claims arising out of the illness and death of companion animals in 2007 due to tainted pet food is another illustration of these types of cases. *In re Pet Food Products Liability Litigation*, MDL Docket No. 1850, Civil Action No. 07-2867, 2008 U.S. Dist. LEXIS 94603 (D. N.J. 2008).

For plaintiffs, perhaps the most significant barrier to bringing these types of lawsuits is the limitation on available damages. A recent appellate case reinforced the restrictions on damages available in Indiana

with the statement that the "loss of a pet dog is only an economic loss which does not support a claim of negligent infliction of emotional distress." *Lachenman v. Stice*, 838 N.E.2d 451, 461 (Ind. App. 2005). Plaintiff attorneys in other states have become quite creative in making arguments that would allow for the recovery of greater damages in these types of cases.

A few states have passed legislation that provides for the ability to bring civil cases allowing for the recovery of specified damages caused by the loss of a pet. Compare Tenn. Code §44-17-403 (allowing for damages up to \$5,000 for the intentional or negligent death of a pet) with 510 Ill. Comp. Stat. Ann. 70/16.3 (allowing for the recovery of veterinary expenses, emotional distress and punitive damages capped at \$25,000 if the animal is subject to an act of aggravated cruelty or torture).

Disability law

The United States Department of Justice proposed regulations amending the Americans with Disabilities Act have focused attention on the increasing use of service animals in our society. Service animals are not used exclusively by persons with physical disabilities but are now being used to assist persons with mental disabilities. Attorneys who represent places of public accommodation, housing providers (through the application of the Federal Fair Housing Act) and even educational institutions should be able to advise their clients on the rules relating to service animals.

Other areas of law

Of course, many other areas of the law deal with animals. Examples in real property law are cases based on the restriction on the number or type of animals (including breed


discriminatory legislation).

Constitutional law issues can arise if an animal is removed from an owner without due process. If a client is engaged in confined animal production, environmental laws may be implicated.

V. Conclusion

Has this article piqued your interest? An animal law section can be the place to determine whether you would like to develop this area of practice. A primary benefit of such a section is to provide practitioners who work in the area the opportunity to learn from each other. Becoming active in an animal law section can help you keep on top of the latest trends in this developing practice area.

As with any other section of the ISBA, it is anticipated that attorneys with widely divergent ideas and backgrounds would be active in the section. If you would like to be kept informed about the status of the proposed section, please provide Maryann Williams, mwilliams@inbar.org, with your contact information to include your e-mail and postal addresses.

The issues raised in this article are discussed in more detail in an article by the author, "The Pervasive Nature of Animal Law: How the Law Impacts the Lives of People and Their Animal Companions," in Volume 43 of the *Valparaiso Law Review*. Additional articles relating to the topic can be accessed through the author's Web page at: www.valpo.edu/law/faculty/rhuss 

Rebecca J. Huss is a professor of law at Valparaiso University School of Law in Valparaiso, Ind. In 2007 Prof. Huss was appointed by the District Court of the Eastern District of Virginia as the guardian/special master in Civil Action No.: 3:07CV397, United States v. Approximately 53 Pit Bull Dogs (the Bad Newz Kennels case).